

# A GUIDE FOR THE REPORT OF FINANCIAL LIABILITY OFFICER

## Administrative Law Division

Office of the Staff Judge Advocate, Fort Jackson, South Carolina

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# **A GUIDE FOR THE FINANCIAL LIABILITY OFFICER**

## **I. INTRODUCTION**

### **a. Purpose.**

The purpose of this guide is to assist you in conducting a timely, thorough, and legally sufficient Financial Liability Investigation of Property Loss. If you have any questions regarding the financial liability investigation system after reviewing this guide, contact an administrative law attorney at 751-7657.

Army Regulation 735-5, Property Accountability, Policies and Procedures for Property Accountability, governs the financial liability investigation system and is the source of the information provided in this guide. Confirm that your copy of the update is current and refer to it and this guide as you process your financial liability report. For your reference, the relevant paragraphs and appendices are cited for each topic covered by this guide.

### **b. What is your mission?**

Upon appointment as a financial liability officer, your primary military duty becomes the completion of the financial liability report. As a financial liability officer, you investigate and analyze the facts surrounding the loss, damage, or destruction of government property and recommend whether to assess liability against someone responsible for the property. You may recommend liability against a person only if the evidence indicates the negligence or willful misconduct of that person proximately caused the loss. Throughout this guide, the term "loss" includes a loss of, damage to, or destruction of government property, or a loss of accountability of such property.

Determining whether there has been a loss caused by a person's negligence or willful misconduct is the primary goal of the financial liability system. To accomplish this task, you must investigate the facts, analyze the evidence, and prepare the financial liability report. After you have completed the financial liability report, you should submit it for legal review and then forward it and the legal review to the appointing authority. The appointing authority will review your findings and recommendation and forward them to the approving authority. The approving authority ultimately decides whether to assess liability.

References: Paras. 13-28, 13-29, 13-30.

## **II. CONDUCTING THE INVESTIGATION.**

### **a. When do you begin?**

You should begin your investigation as soon as you are notified of your appointment as a financial liability officer. In most cases, your battalion commander will notify you and provide you with the original and copies of a partially completed DD Form 200, Financial Liability Investigation, and its supporting exhibits. This document identifies the property being surveyed and describes the alleged circumstances surrounding the loss of the property in block 11.

Unless otherwise directed, you have 30 days to complete the financial liability investigation. If your investigation exceeds 30 days, you must attach as an exhibit a statement explaining the reason for the delay. Likewise, if you determine that the financial liability investigation was not initiated within 15 days of the discovery of the loss or will exceed 75 days total processing time, you must attach as an exhibit a statement from the person who caused the report to exceed these targets. A timetable for processing financial liability investigations is available at figures 13-1 and 13-2, AR 735-5.

References: Paras. 13-6, 13-8, 13-26, 13-31, App. C-2.

### **B. How should you approach your investigation?**

You should approach your investigation with an open mind, without any preconceived ideas regarding who or what caused the loss. You must strive to find the truth. A thorough investigation may establish that financial liability should be assessed, should not be assessed, or should be assessed against a person other than the one identified in the original report. You should use the information provided in the report as a starting point, but you must conduct your own independent investigation to determine whether government property has been lost, damaged, or destroyed, and whether liability should be assessed, and if so, against whom.

Reference: Para. 13-31.

#### ***1. What if you recover the property during your investigation?***

If all of the property listed on the report is recovered during your investigation, notify the appointing authority of the discovery.

Reference: Para. 14-14.

#### ***2. What should you do with damaged property?***

You should immediately examine damaged property, document its condition and cost of repair, and release the property for repair or turn-in. Do not delay the

financial liability investigation process while waiting for the actual cost of repair. You may process the report with an estimated cost of repair if the estimate is prepared by a technical expert. If the actual cost of repair turns out to be less than the estimated cost of repair and the estimated cost of repair has been collected from the respondent, you must ensure that the difference is reimbursed to the respondent. If the property cannot be repaired, document its salvage value with a statement from a technical expert and release the property for turn-in. When you release property for repair or turn-in, be sure to prepare a memorandum stating the reasons for the transfer and forward it with the damaged or destroyed equipment.

To qualify as a technical expert, a person must have broad experience in dealing with the item and have thorough knowledge regarding its uses, mechanisms, and functions. In many cases the maintenance support staff will qualify as technical experts.

If the damaged property is the result of a vehicular accident involving a GSA vehicle or a rental vehicle rented from a commercial activity, and the proof of damages (such as, photographs) and estimated cost of damages were documented according to para 13–12e, it is not necessary for the financial liability officer to release the vehicle for repair or turn-in. However, the financial liability officer must rely on this documentation in lieu of physically examining the damaged vehicle.

References: Paras. 13-31, 14-25, Apps. B-3, B-6, B-7.

### **C. How do you conduct your investigation?**

Your investigation involves gathering evidence. Evidence is any form of proof that tends to show the value of or what happened to the lost, damaged, or destroyed property. Evidence can be in many forms and often includes testimony, documents, photographs, and diagrams. You should obtain statements from each person who has personal knowledge of the circumstances surrounding the loss. At a minimum, you should collect documents that show the value of the property, such as Army Master Data File records or appraisals, and documents that show what happened to the property, such as hand receipts, police reports, and statements from responsible persons. If possible, you should personally inspect the areas involved with the loss, such as a supply room or range site, and attach as an exhibit a photograph or diagram of the area.

Reference: Para. 13-31.

#### **1. Whom should you interview?**

You should interview and obtain sworn statements from each person whose testimony may help determine the cause of, or responsibility for, the loss. Begin

by interviewing the individuals who are most directly connected to the lost, damaged, or destroyed property, such as those identified in block 11. They will often reveal other individuals whom you should interview, such as the hand receipt holder, subhand receipt holders, and other individuals who were responsible for the property or who have knowledge of the circumstances surrounding its loss.

References: Para. 13-31, App. C-2.

## ***2. How do you document the statements made during an interview?***

You should record the substance of each interview on DA Form 2823, "Sworn Statement." If DA Form 2823 is not available, use plain bond or ruled paper and type or legibly print the word "CERTIFICATE" across the top of the paper. Both DA Form 2823 and its substitute must be dated and signed under oath by the individual making the statement. As a financial liability officer, you may administer this oath, printed on the DA Form 2823:

"I (insert name), have read or have had read to me this statement which begins on page 1 and ends on page (insert last page number). I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement."

You should direct the person making the statement to make this oath orally and in writing at the bottom of his or her statement. Also direct the person to sign below his or her statement.

Reference: Para. 13-31.

## ***3. How do you label the documents, interviews, and other exhibits?***

You should mark your exhibits with the word "Exhibit," an alphabetical designation, and followed by the letters "R/S," the date of the survey, the amount assessed by the survey, and the organization or account found on the DD Form 200. Example: Exhibit A, R/S, 20 January 2006, \$575, Co. Z, 906th Signal Battalion.

Reference: Para. 13-31.

## **D. What is the ultimate goal of your investigation?**

The goal of your investigation is to collect evidence that shows the value of and what happened to the lost, damaged, or destroyed government property and who

caused the loss. Seek to answer the following questions as you gather documents and interview individuals:

1. What property was lost, damaged, or destroyed and what was its value?
2. When and where was it lost, damaged, or destroyed?
3. How was it lost, damaged, or destroyed? and
4. Who was responsible for it when it was lost, damaged, or destroyed?

Ultimately, your report should document what happened to the lost, damaged, or destroyed property and who—if anyone—was responsible for its loss.

References: Paras. 13-30, 13-31.

***1. What property was lost, damaged, or destroyed, and what was its value?***

You should first determine what government property, if any, has been lost, damaged, or destroyed. With property listed as lost, however, be sure to verify that the property was in fact issued. Obviously, if the property was not issued, no loss occurred and the report should be canceled.

***2. When and where was the property lost, damaged, or destroyed?***

If possible, you should determine when and where the loss occurred. If you cannot verify the alleged circumstances of the loss, or if the time or location of the loss is uncertain, determine when the property was last accounted for and who was responsible for it. Narrow the potential times and places as much as possible. In some cases, the person last responsible for the property may be held financially responsible for the loss even though the exact time and place of the loss cannot be determined.

***3. How did the loss, damage, or destruction occur?***

You should pursue and document all possible reasons for the loss. What happened to the property? Was the property stolen? Was it lost? Was it burned? Was it dropped? In some cases, this determination will be easy. For example, the report may indicate that "the vehicle was damaged when PVT Bad News struck it with a sledge hammer." If you collect evidence that proves this claim, your task is complete. If however, the report does not correctly indicate how the loss occurred, you should consider what the evidence shows -- the what, when, where, and who -- to determine how the loss most likely occurred.

***4. Who was responsible for the property?***

You should identify each person who has some form of responsibility for the property. There are four types of responsibility.

Personal responsibility is the obligation of a person to properly use, care for, and safeguard all government property in his or her physical possession, whether or not receipted. It applies to all government property issued for, acquired for, or converted to a person's exclusive use, with or without receipt.

Direct responsibility is that responsibility acquired by a person who signs a receipt for property to ensure that it is properly used and cared for and that proper custody and safekeeping are provided. It results from assignment as an accountable officer, receipt of formal written delegation, or acceptance of the property on hand receipt from an accountable officer. Commanders and supervisors should determine and assign in writing the individuals who will have direct responsibility for property.

Supervisory responsibility is the obligation of a supervisor to ensure that all government property issued to or used by his or her subordinates is properly used and cared for and that proper custody and safekeeping are provided. It is inherent in all supervisory positions, is not contingent upon signed receipts or responsibility statements and cannot be delegated. It arises because of assignment to a specific position and includes: 1. providing proper guidance and direction; 2. enforcing all security, safety, and accounting requirements; and 3. maintaining a supervisory climate that will facilitate and ensure the proper care and use of government property.

Command responsibility refers to the duty of a commander to ensure that all government property within his or her command is properly used and cared for and that proper custody and safekeeping are provided. It is inherent in command and cannot be delegated. It is evidenced by assignment to a command position at any level and includes: 1) ensuring the security of all property of the command whether in use or in storage; 2) observing subordinates to ensure that their activities contribute to the proper custody, care, use, and safekeeping of all property within the command; 3) enforcing all security, safety, and accounting requirements; and 4) taking administrative or disciplinary measures when necessary.

Custodial responsibility is the obligation of an individual for property in storage awaiting issue or turn-in to exercise reasonable and prudent actions to properly care for, and ensure proper custody, safekeeping, and disposition of the property are provided. Custodial responsibility results from assignment as a supply sergeant, supply custodian, supply clerk, or warehouse person, and is rated by and answerable directly to the accountable officer or the individual having direct responsibility for the property.

References: Para. 2-8; 13-29.

### **E. What should you do if your investigation focuses on someone senior to you?**

If your investigation requires you to examine the conduct of a person senior to you, report that fact to the approving authority. The approving authority must, in most cases, excuse you and appoint someone senior to the person being investigated. Attach as exhibits a copy of your notification memorandum and a copy of his response memorandum. Senior by time-in-grade is acceptable for these purposes. For a helpful table regarding military and civilian rank comparison see Table 13-1.

Reference: Para. 13-27.

### **III. ANALYZING THE EVIDENCE.**

After you complete your investigation, you must carefully analyze all of the evidence before you make your findings and recommendation. Your analysis should focus on whether there has been a loss of government property, and, if so, whether one of the individuals responsible for the property should be held liable for its loss. For a person to be held liable for a loss, the willful misconduct or negligence of that person must have proximately caused the loss.

During your analysis, you must determine if evidence is credible, whether conduct amounts to willful misconduct or negligence, and if so, whether that willful misconduct or negligence caused the loss.

References: Para. 13-34.

#### **a. How do you determine if evidence is credible?**

Your findings must be supported by credible evidence. Evidence is credible if there is reasonable support for its truth. The evidence in your report must establish a degree of reliability so that a reasonable person is convinced of its truth or falseness, considering all direct and indirect evidence. Direct evidence is based on actual knowledge or observation of witnesses. Indirect evidence includes facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind.

There is no distinction between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence. In other cases, indirect evidence may be more convincing than the statement of an eyewitness. The reliability of the evidence is not determined by the number of witnesses or exhibits but by carefully considering all of the evidence, evaluating factors such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall and relate events, and other signs of truth.

The reliability of evidence is reduced if the statement is self-serving or if it is contradicted by other evidence. To rely on a self-serving or contradicted statement, therefore, you must explain in your findings why you consider the witness or the particular self-serving or contradicted statement to be reliable.

References: Para. 13-31, 13-32.

### ***1. What if a statement is self-serving?***

You may not rely on a statement from an individual who is responsible for the property and whose statement tends to clear him or her from wrong unless you identify corroborating evidence that confirms the self-serving statement or supplementary evidence that supports his or her credibility.

For instance, suppose that SPC Honest states that the crack in the windshield of the government sedan that he was driving was caused when PVT Rock threw a stone at him. PVT Rock denies that he threw the rock. SPC Honest's statement is self-serving because he is responsible for the sedan and his statement tends to clear him from wrong. The financial liability officer may not use SPC Honest's statement to support a recommendation of liability against PVT Rock unless he can explain how other evidence supports its credibility. In this example, the financial liability officer may use this statement in support of his recommendation to hold PVT Rock liable if there is additional evidence that PVT Rock did in fact hit the car with a rock (a statement from a bystander), or if there is other evidence supporting SPC Honest's credibility (you have a reasonable basis to believe SPC Honest rather than PVT Rock).

References: Para. 13-31, 13-32.

### ***2. What if statements contradict each other?***

Documents or testimony may support more than one conclusion and may contradict other evidence in your report. You should use your best judgment and common sense to resolve which account best represents what happened. In your findings, explain how you resolved the contradiction and why you resolved it the way you did.

For example, suppose that the financial liability officer collects a statement from PVT Eyes who claims that he saw CPL Clean take the missing cleaning equipment from the supply closet. The financial liability officer also has a statement from CPL Ears who states he saw CPL Dirt take it. The financial liability officer is unable to collect statements from CPL Clean or CPL Dirt, but concludes that CPL Dirt took the equipment. The financial liability officer must explain why he relied on the statement from CPL Ears and not the one from PVT Eyes. That is, why does CPL Ears' statement make the most sense under the circumstances? In this case the financial liability officer might have evidence that

PVT Eyes was standing 20 meters farther from the room than CPL Ears or that PVT Eyes had his days mixed up and was actually in the field on the day of the loss. The financial liability officer can make this conclusion but must note his analysis in his findings statement.

References: Para. 13-31, 13-32.

#### **b. What types of conduct create financial liability?**

Soldiers and civilian employees are not absolute insurers of the condition of government property entrusted to their care. Instead, liability for a loss is derived from their negligent or other wrongful conduct pertaining to its use or custody. You may impose financial liability for a loss only if the conduct that caused the loss constitutes willful misconduct, simple negligence, or gross negligence. Determining simple negligence, gross negligence, or willful misconduct depends upon the circumstances of each case.

Reference: Para. 13-29.

##### **1. What is simple negligence?**

Simple negligence is the failure to act as a reasonably prudent person would act under similar circumstances. In other words, would another individual, of similar experience and relationship to the property, as a matter of common sense, act differently to safeguard the property? If the answer is yes, then you have established negligence. To hold someone liable, however, you also must establish that the simple negligence proximately caused the loss.

##### **2. What is gross negligence?**

Gross negligence is an extreme departure from the conduct of a reasonably prudent person under similar circumstances. It is a reckless or deliberate disregard for a foreseeable loss or damage of the property. Plainly, if negligence is failing to use common sense, gross negligence is failing to use any sense at all. For example, if SGT Hungry started boiling grease to make french fries, forgot about it, and the kitchen caught on fire, he would have committed an act of simple negligence. Someone else making french fries, using common sense, would have known not to leave the grease unattended. On the other hand, if SGT Hungry dug a barbecue pit in his living room, filled it with charcoal, doused it with gasoline and threw a match, thereby vaporizing his living room, he would have committed an act of gross negligence.

##### **3. What is willful misconduct?**

Willful misconduct involves an intentional act specifically aimed at causing a loss, damage, or destruction of government property. For example, if PVT Schmedlap

destroys the commander's office with a claymore mine, he has committed an act of willful misconduct. He intended to do the wrongful act that caused the destruction and is liable for the loss. PVT Schmedlap would also be liable for the damage to the building if he only intended to destroy the front door. To be liable for the entire damage, he must only intend to cause damage; he need not necessarily intend to cause the severity of the damage that occurs. Remember, however, that willful misconduct alone is insufficient to impose liability. To hold someone liable for a loss, you must also establish that the willful misconduct proximately caused the loss.

**c. How do you determine if conduct is negligent?**

Negligence depends upon the circumstances. As noted above, it is the failure to act as a reasonable person under the same or similar circumstances. At a minimum, you should consider the following factors when you determine whether conduct is reasonable: 1. the person's age, experience, physical condition, and qualifications; 2. the type of responsibility the person had towards the property; 3. the type and nature of the property; 4. the adequacy of supervisory measures or guidance for property control; 5. the feasibility of maintaining close supervision over the property given the nature and complexity of the organization or activity supervised; and 6. the extent supervision could influence the situation considering pressing duties or lack of qualified assistants.

Reference: Para. 13-32.

**d. What is proximate cause?**

Proximate cause is the cause which produced the loss in a natural and continuous sequence, unbroken by a new cause. It is the most direct cause. A loss is proximately caused by an act, or a failure to act, whenever the act or omission played a substantial part in bringing about or actually causing the loss, and the loss was either a direct result or a reasonably probable consequence of the act or omission. Consider the following examples as you analyze the facts of your case.

Example 1. SPC Careless leaves his TA-50 gear overnight on the front seat of his unlocked car. The gear is stolen. By failing to act as a reasonable person of similar background and experience would, SPC Careless was negligent in his care of the property. His negligence proximately caused the loss because he substantially contributed to the loss by leaving the equipment in his unlocked car overnight. Therefore, you should recommend that he be held liable for the loss.

Example 2. 1SG Noluck recovers SPC Careless' stolen TA-50, but subsequently manages to lose it. Although SPC Careless' original conduct was negligent, his negligence is no longer the proximate cause of the loss. The gear was returned to the control of the government when 1SG Noluck recovered it. In this case, you

should consider the conduct of 1SG Noluck to determine whether he was negligent in his care of the recovered property, and if so, whether his negligence caused the present loss.

Example 3. PVT Speed is driving his 2 1/2 ton truck down a steep hill at an excessive rate of speed. He is unable to manage the curve at the bottom of the hill and hits a tree. If a reasonably prudent person with the same background and experience would not have attempted the curve at such an excessive rate of speed, then PVT Speed was negligent in his care of the truck. His negligent conduct -- speeding -- is the proximate cause of the accident because it is rationally related to the type of accident which occurred. You may recommend that he be held liable for the damage to the truck.

Example 4. CPL Crash is speeding in a 15 mile-per-hour zone. A limb on an old pine tree breaks, falls, and shatters his windshield. Here, even though CPL Crash was negligently driving too fast, his negligence is not the proximate cause of the loss. The falling limb proximately caused the damage to the vehicle. Speeding is not rationally related to the type of accident that occurred. That he was driving at the wrong time, in the wrong place, was pure chance. If, for example, he had left the motor pool a few minutes earlier, but had not been speeding, the damage would have still resulted. Even though he was negligently driving too fast, CPL Crash's negligence did not proximately cause the damage.

Example 5. SSG Supply issued property without obtaining hand receipts. You cannot determine who received the property or where it is located. Because SSG Supply negligently failed to issue a hand receipt, and because you cannot determine to whom he issued the property, his negligence proximately caused the loss. The basis for a recommendation of liability would be a loss of accountability. On the other hand, if the investigation clearly reveals that SSG Supply issued the missing property to PVT Smith -- with or without a subhand receipt -- the investigation should focus on the conduct of PVT Smith.

Reference: Para. 13-29.

***e. What if the loss is caused by the willful misconduct or negligence of two or more people?***

You may encounter circumstances where two or more people share responsibility for causing the loss of government property. You may hold more than one person liable if the evidence indicates that the negligence or willful misconduct of each person proximately caused the loss. If you hold more than one person liable, you must afford each of them his or her notice, rebuttal, and appeal rights, and must prepare the report with each person's name, social security number, basic monthly pay, and estimated termination of service date. They will be held collectively and individually for the loss in accordance with the formula at Table 12-4, AR 735-5. You must follow this formula to determine the

liability of two or more different people and may not recommend any other percentage of liability between the parties. For instance, you may not hold one respondent 20% liable and another 80% liable.

References: Para. 13-34, Table 12-4.

#### **IV. PREPARING THE REPORT.**

##### **a. What are your findings?**

The findings statement is your explanation of what happened to the lost, damaged, or destroyed government property. It should be based upon your evidence and should be as thorough as possible. You should begin with your ultimate conclusion as to the value and cause of the property loss. Insert the appropriate words in the following example:

"I have examined all available evidence as shown in exhibits \_\_\_\_ thru \_\_\_\_ and as indicated below have personally investigated the same and it is my belief that the article(s) listed hereon and/or attached to sheets, have a total cost of \$\_\_\_\_\_, and (choose a, b, or c:)

(a) was/were (lost, damaged, or destroyed) through the (simple, gross negligence) of \_\_\_\_\_; or

(b) was/were (lost, damaged, or destroyed) by the willful misconduct of \_\_\_\_\_; or

(c) was/were (lost, damaged, or destroyed) as the result of (an unavoidable accident, an unpreventable theft, indeterminable circumstances, etc.)."

After this sentence, describe what happened to the property. Use clear, simple language. Tell what was lost, when, where, how, and by whom. Your findings statement should also note if you determined that the loss was caused by willful misconduct or negligence. Describe how a person's conduct was willful or negligent. You should also describe why you resolved any conflicting evidence the way you did. What evidence was most persuasive? This narrative should support and explain the conclusion with which you began your findings statement. You may attach additional sheets if you are unable to insert the full statement in the block provided on the DD Form 200.

References: Para 13-34, Fig. 13-6.

##### **1. How should you reference the exhibits that support your findings?**

You should reference the exhibits that support your conclusions in order to tie your report together and to insure that your conclusions are supported by the

evidence. For example, if Exhibit A is a hand receipt showing that PFC Schmedlap was issued night vision goggles on 3/1/96, you should reference that exhibit in your findings as follows: "PFC Schmedlap was issued the night vision goggles on 3/1/96. (Exhibit A)." Every statement of fact in your findings should be followed by a reference to the document that supports it.

Reference: Para. 13-29.

***2. How should you explain how you resolved contradictory evidence, self-serving statements, or unanswered questions in your findings?***

You must explain your analysis of the evidence. If there are contradictory or self-serving statements or questions left unanswered in the investigation, you should explain how you resolved the evidence in light of these inconsistencies. That is, why did you believe one account or document more than another? Similarly, if a person responsible for the property makes a statement that tends to clear him from wrong, you must note some other evidence that confirms the self-serving statement or supports his credibility. Finally, if you were unable to discover what happened to the property, you should describe your efforts to do so and why you think the evidence is sufficient to determine whether or not to assess liability.

References: Para. 13-32.

**b. What is your recommendation?**

Your recommendation is your determination, based upon the findings, of whether or not someone should be held liable for the loss. You may recommend that those responsible for the property 1. be relieved from responsibility and accountability or 2. be held financially liable. You should recommend that all parties be relieved of accountability and responsibility if you determine that neither negligence nor willful misconduct caused the loss or if you are unable to determine the cause of the loss. You must recommend that a responsible party be held financially liable if you conclude that the negligence or willful misconduct of that person caused its loss, damage, or destruction.

Include with your recommendation the following information: the full name, social security number, monthly base pay (or 1/12 annual pay for a civilian employee) at the time of the loss, and the estimated termination of service date of the individual. You must also demonstrate how you calculated the amount of liability assessed. Explain your calculations and refer to the specific provision of the regulation which authorizes that method of valuation. If the financial liability officer and the respondent have the same rank, you must include the date of rank for both individuals.

Reference: Para. 13-34.

### **c. How do you calculate the pecuniary charges?**

You must enter the actual loss, amount charged, and loss to the government. The actual loss is the difference between the value of the property immediately before and immediately after the loss, damage, or destruction. The amount charged is the amount of liability assessed against the person being held financially liable for the loss. The loss to the government is the difference between the actual loss and the amount charged..

References: Apps. B-1, B-2, B-3, B-5.

#### ***1. How do you determine the actual loss?***

The actual loss may be determined using one of four methods: 1. cost of repair; 2. market value; 3. depreciation; or 4. standard rebuild cost. If the property is repairable, the actual loss is the cost of repair. If the property is not repairable and a technical inspection is feasible, the actual loss is the difference between the value of the item before the damage and the appraised value after the damage. If the item is not repairable and a technical inspection is not feasible, the actual loss is the depreciated value of the property. If the property is not repairable, a technical inspection is not feasible, and depreciation is not possible or equitable, the value of the loss is the difference between the actual cost and the standard rebuild cost plus any salvage credit.

References: App. B-5.

#### ***i. How do you determine actual cost of repair?***

For damaged property that can be repaired, the loss to the government is the lesser of the cost of repair or the value of the item at the time of the damage. The cost of repair consists of the sum of material, labor, transportation, and overhead costs minus the salvage or scrap value of the replaced parts. If repair makes the item more valuable than it was before the loss, reduce the cost of repair by the amount of the increased value. If the actual cost of damage cannot be determined within a reasonable time, you may use an itemized estimated cost of damages if you state the reason for using the estimated rather than actual cost and the basis on which your estimate was made. If the actual cost of damage is later discovered to be less than the estimated cost of damage, the financial liability report will have to be reopened, the charge amended, and the difference reimbursed to the respondent. If the actual cost of damage is later discovered to be more than the estimated cost of damage, you may process another financial liability investigation against the respondent for the additional amount. You must, however, give the respondent notice and an opportunity to rebut the additional charge.

References: App. B-6.

## ***ii. How do you determine the appraised value and salvage credit?***

If the property cannot be repaired, the actual loss is the value of the property immediately before the loss minus its salvage or scrap value. Actual value at the time of the loss or damage may be computed in one of three ways.

a. Fair Market Value. The preferred method of fixing the value of property at the time of loss or damage is by a qualified technician's appraisal of its fair market value. First, a technician determines the condition of the item at the time of the loss or damage through personal knowledge, review of maintenance records, conversations with personnel, and any other means available. Second, the commercial market will be reviewed to determine the price that similar items in similar condition have sold for in commercial transactions within the last six months. Appraisal guides accepted in the commercial market, such as the NADA Official Used Car Guide may be used for this purpose. Though using the fair market is preferred, if the appraised value appears to be unfair to the government or the respondent, and depreciation would create a fairer amount, you should depreciate the item.

References: Apps. B-3, B-7.

## ***iii. How do you determine depreciation?***

Depreciation reduces the value of an item at a standard rate based upon its type of property and its time in service. To calculate the depreciated value of an item, you reduce the original cost of the item by a percentage listed for that particular type of property. The original cost of the item can usually be determined by obtaining the Army Master Data File price.

-For items less than six months old, do not depreciate.

-For organizational clothing and individual equipment and nonpower handtools, deduct 10 percent.

-For items constructed with relatively perishable material (except CTA 50 items) such as leathers, canvas, plastic, and rubber, deduct 25 percent.

-For electronic equipment and office furniture, deduct 5 percent per year of service, up to a maximum of 50 percent.

-For tactical and general purpose vehicles, deduct 5 percent per year of service, up to a maximum of 90 percent.

-For all other property, use 5 percent per year of service, to a maximum of 75 percent.

-If the time of service cannot be determined, use a standard 25 percent.

-For damage to quarters, use AR 210-6 to determine the depreciation rate.

If you conclude that the lost, damaged, or destroyed property was subjected to more or less use than that reflected in the above rates, you may increase or decrease the depreciation rates as long as your conclusion is substantiated by evidence in the report. AR 27-20 provides guidance on depreciating types of property not listed above.

References: App. B-2, B-8.

#### ***iv. How do you determine the standard rebuild cost?***

If the depreciated value is not possible or equitable, and the item is not new or recently rebuilt, you may use the standard rebuild cost to determine actual loss if a standard rebuild cost has been published and the property has been used long enough to warrant overhaul. When using this method, subtract the standard rebuild cost, offset by any salvage value, from the current Army Master Data File price.

References: App. B-2.

### ***2. How do you determine the amount charged?***

Generally, the amount charged is the lesser of the actual loss to the government or the respondent's monthly base pay (or 1/12 annual pay for a civilian employee) at the time of discovery of the loss.

The amount charged is the full amount of the loss to the government if: 1. personal arms and equipment are lost, damaged, or destroyed; 2. public funds are lost; 3. an accountable officer, a nonappropriated fund activity, or a state is liable for the loss; or 4. if government quarters are damaged due to gross negligence or willful misconduct of the occupant or, in some cases, the occupant's guests.

References: Para. 13-42.

#### ***i. What property is considered personal arms and equipment?***

Personal arms and equipment are equipment or clothing issued to individuals for their sole use and care. Included are weapons, personal retention items, mobility kit bags, flight jackets, parkas, and similar items. In defining personal arms or equipment, determine how the property is used by the member, and whether it is turned in at the end of the work shift. This is especially true when dealing with portable radios and hand tools. A portable radio, for example, is personal

equipment when an individual uses it constantly, carries it wherever he goes, and has it for an indefinite period of time. However, it is not personal equipment when the individual has it for a specified time while on duty, and turns it in to be used by others at the end of the shift.

***ii. When is a housing occupant liable for damage caused by his guests?***

An occupant is liable for the gross negligence or willful misconduct on the part of his dependents, guests, or pets if the occupant knew of the risk involved and failed to exercise due care in preventing the loss. Without evidence to the contrary, occupants are presumed to be on notice of risks attending the activities of those whom the occupant invites onto his premises.

Reference: Para. 13-32.

**d. How do you determine the amount of liability for individuals collectively responsible for the loss or damage?**

If you conclude that the loss is caused by the negligence or willful misconduct of two or more individuals, you should recommend that they be held collectively and individually liable. If the actual loss exceeds the combined monthly basic pay for each individual, charge the full amount of each soldier's basic pay (or the full amount of 1/12 of the annual pay for civilian employees). If the actual loss is less than the combined basic pay of all individuals, compute the charges in proportion to the soldier's basic pay (or for civilian employees in proportion to 1/12 of the annual pay).

For example, if two soldiers are collectively liable for an actual loss of \$1000, and the basic pay of soldier #1 is \$500 and basic pay for soldier #2 is \$1000, each soldier will pay a proportional share. Add the basic pay of the soldiers (\$500 plus \$1000) for a combined basic pay of \$1500. Then divide each soldier's monthly basic pay by the combined basic pay. Finally, multiply this percentage by the actual loss amount to arrive at each soldier's financial charge. Soldier #1 would owe \$333.33 (\$500 divided by \$1500, multiplied by \$1000). Soldier #2 would owe \$666.67 (\$1000 divided by \$1500, multiplied by \$1000). For collective liability among civilian employees, merely substitute 1/12 annual pay for the monthly basic pay.

References: Para. 13-34, Table 12-4.

**V. NOTIFYING THE RESPONDENT.**

**a. What if you recommend that all parties be relieved from accountability and responsibility?**

If you recommend that all parties be relieved from accountability and responsibility, forward the original and copies (the number specified by your command) of the financial liability investigation to the appointing or approving authority for appropriate action. You should also retain a copy for your records.

Reference: Para. 13-33.

**b. What if you recommend that liability be assessed against someone?**

If you recommend liability against someone, you must inform that person of your recommendation and give him or her a chance to examine the financial liability investigation and exhibits. You must advise the person of the potential consequences of your recommendation and the significance of any statement made by him or her regarding possible liability.

You must provide written notice of the amount of liability recommended and of his or her right to inspect and copy Army records relating to the debt, to legal advice, and to submit a statement and other evidence in rebuttal of the financial liability officer's recommendation. You must do more than request that the respondent complete blocks 30, 31, and 32. You should explain these rights to the respondent orally and in writing, using Figure 13-11 as an example. If you recommend that more than one person be held liable, prepare continuation sheets for blocks 30 through 32b as shown in Figure 13-8, and provide them each with written notice.

References: Para.13-34, Figs. 13-8, 13-11.

**c. How do you notify the person against whom liability is recommended?**

If the respondent is stationed locally, he should be contacted in person, counseled regarding his rights, provided a copy of the report and exhibits, and asked to complete blocks 30, 31, and 32. Explain to the respondent that signing is not an admission of liability and does not waive any of his legal rights. If the respondent refuses to sign, attach a statement to the financial liability investigation explaining the circumstances of the refusal and forward the report and statement to the legal office for review. Once the review is complete, forward the financial liability investigation to the approving authority. If he was notified of his rights in person, he has 7 days to respond.

If the respondent is not stationed locally, you must send him a copy of the survey and the notification memorandum by either certified or registered mail, return receipt requested. A copy of the memorandum and the certified or registered mail receipt and return receipt must be attached to the financial liability investigation. Individuals located in the continental United States have 15 days from the date of mailing to respond. Individuals stationed outside the continental United States have 30 days to respond.

References: Paras. 13-34, 13-35.

**d. What should you do with a rebuttal statement?**

If you receive a rebuttal statement, you must consider it and note your consideration of it as an exhibit to your report. If the individual does not respond within the appropriate time, include a statement to that effect as an exhibit. If the respondent indicated that he intended to submit a statement but has not after the allotted time, explain the individual's intent and omission in block 26 and forward the report without the rebuttal. If you receive a rebuttal after the time has passed, you must consider it, respond to it, and forward it and your response to the legal office for review. After the financial liability investigation has been reviewed for legal sufficiency, forward the financial liability investigation and legal review to the appointing or approving authority as appropriate.

References: Para. 13-35.

**e. What do you do after you have notified the respondent and responded to his or her rebuttal statement?**

When you have completed the report, properly notified the respondent, and responded to his or her rebuttal, forward a copy of the financial liability investigation to the legal office for review. Once the financial liability investigation has been reviewed for legal sufficiency, forward the original and copies (the number specified by the command) of the financial liability investigation to the appointing or approving authority for appropriate action. You should also retain a copy for your records.

Reference: Para. 13-35.